

## PRIMMER PIPER EGGLESTON &amp; CRAMER PC

Attorneys at Law

900 Elm St., 19th Floor | P.O. Box 3600 | Manchester, NH 03105-3600

PAUL J. PHILLIPS

pPhillips@primmer.com

TEL: (603) 626-3300

FAX: (603) 626-0997

ADMITTED IN NEW HAMPSHIRE AND VERMONT

**VIA HAND DELIVERY & ELECTRONIC MAIL**

MAR 31 PM2:42

March 31, 2017

Ms. Debra Howland  
 Executive Director and Secretary  
 New Hampshire Public Utilities Commission  
 21 South Fruit Street  
 Concord, NH 03301

**Re: DT 16-872 (Joint Petition for Findings in Furtherance of the Acquisition of FairPoint Communications, Inc. and its New Hampshire Operating Subsidiaries by Consolidated Communications Holdings, Inc.)**

Dear Ms. Howland:

FairPoint Communications, Inc. ("FairPoint") received an email from David Wiesner, Staff Attorney, at 4:41 pm yesterday evening (see Attachment 1) proposing to extend certain dates in the Procedural Schedule approved by the Commission in the above-referenced proceeding. The Staff's Direct Testimony is due to be filed today (March 31st) under the Commission's schedule. Mr. Wiesner's 11th-hour communication would delay that filing by 3 weeks. FairPoint objects to Mr. Wiesner's proposal and believes that Staff should adhere to the Commission's Procedural Schedule without further delays.

Mr. Wiesner's proposal would extend the deadlines for rolling discovery (which already ended on March 10, 2017, without extension by the Commission), for the technical session (which was scheduled to occur on March 22nd but was replaced by a meeting that same day with the Commission's Hearings Examiner), and for the Direct Testimony of Staff and Labor Intervenors (which is due today, March 31st). All of these proposed extensions, taken together, would make it virtually impossible for the Commission to conduct the scheduled merits hearings in this matter on April 27-28. FairPoint understands from its discussions with Staff and with Hearings Examiner Anne Ross that no further hearing dates before the Commission are available until late May, and no further *consecutive* hearing dates are available until early June.

The proposed delays are unnecessary, as they rest on the premise that additional written discovery is needed. The Staff's consultant has now propounded 3 sets of Data Requests, comprising hundreds of questions (parts and subparts), to both Consolidated and FairPoint. The sheer volume of the Staff's Data Requests, and the resulting volume of data that the Petitioners have provided in response, is the principal basis that Mr. Wiesner offers for his

proposed revisions to the schedule. Allowing further written discovery will only exacerbate these problems.

We also draw attention to the fact that the Commission's deadline for written discovery from Staff expired on March 10, 2017, and has not been extended by the Commission. The Staff did not raise the prospect of a fourth round of written discovery in either of the two meetings that the Staff and the parties had with Hearings Examiner Ross on March 21st and March 22nd. In the first meeting, Hearings Examiner Ross did not adopt Mr. Wiesner's proposal to extend the discovery and testimony deadlines and emphasized her desire to keep on track toward the April 27-28 technical hearings before the Commission. The parties worked with Staff and its consultant to satisfy its requests for information, but did not agree to endless discovery by so doing. In addition, Hearings Examiner Ross indicated to the parties at their March 22, 2017 meeting that another technical session on March 31, 2017 would be held. However, the parties have received no formal notification about this session. And when asked about it by Consolidated's counsel, Mr. Wiesner responded with the attached e-mail indicating that the current schedule should be modified.

Despite the lack of an authorized discovery extension, yesterday afternoon Mr. Wiesner propounded to Consolidated a document entitled "Insufficient Responses" containing requests for additional information beyond that sought by the original data requests. This morning, Mr. Wiesner propounded Set 4 Data Requests to Consolidated and to FairPoint. These additional Data Requests fall well beyond the Commission's March 10th deadline for discovery and are out of time. The period for written discovery must come to end, and a follow up technical session for oral questioning must be held as soon as possible, as is the customary practice in Commission proceedings. In addition, the deadline for Staff's Direct Testimony remains the close of business today, March 31st, and has not been extended by the Commission.

Granting Mr. Wiesner's 11th-hour extension request will greatly prejudice the petitioners' ability to meet their expected closing date for this transaction at the end of June. Staff had an opportunity, in the two recent meetings with the Hearings Examiner, to request authorization for additional written discovery and did not do so. The petitioners should not be subject to untimely data requests and to late changes in the schedule that could easily have been discussed fully and fairly among the parties and the Hearings Examiner.

FairPoint opposes the Staff's late extension request. FairPoint believes that an immediate meeting or conference call with the Hearings Examiner is needed to manage the scheduling issues that have arisen as a result of Staff's untimely requests for extension and additional discovery.

Thank you for your prompt attention to this matter.

Sincerely,



---

Paul J. Phillips, Esq.  
Counsel for FairPoint Communications, Inc.

cc: Electronic Service List, DT 16-872

**Paul Phillips**

---

**From:** Wiesner, David K <David.Wiesner@puc.nh.gov>  
**Sent:** Thursday, March 30, 2017 4:41 PM  
**To:** 'Geiger, Susan S.'; Paul Phillips; 'Scott J. Rubin (scott.j.rubin@gmail.com)'; William Black  
**Cc:** Ladam, Michael; Cleveland, Lisa; Michael Antonuk  
<michael@libertyconsultinggroup.com> (michael@libertyconsultinggroup.com); John  
Antonuk (antonuk@libertyconsultinggroup.com)  
**Subject:** RE: Friday tech session?  
**Attachments:** Consolidated Insufficient Discovery Response Summary 3-30.docx

Susan,

As I believe Michael Ladam mentioned to you this afternoon, our view is there is no real value to having a technical session conference call tomorrow, given the volume of discovery responses that have been received over the past three days and ongoing efforts to review and digest those responses.

Based on Liberty's initial review of the first set responses, the attached summary of "insufficient responses" has been prepared. We would ask that Consolidated endeavor to address the issues noted in the insufficient response summary and provide supplemental responses over the next few days. We will also be issuing a fourth set of follow-up data requests to both companies later today or tomorrow, and we would ask that the companies provide responses at the earliest possible time next week.

With respect to the discovery and procedural schedule for this docket, Staff believes that the current schedule should be modified as follows:

- April 5, 2017 End date for rolling discovery by Staff (assuming that all prior requests have been fully answered by April 4)
- April 10, 2017 Technical Session to wrap-up Staff discovery issues
- April 19, 2017 Direct Testimony filing by Staff and Labor Intervenors

Please let me know if Consolidated is prepared to agree to these revised dates, and I would also ask that FairPoint and the Labor Intervenors indicate their positions on the proposed schedule modification.

Thanks, Dave

---

**From:** Geiger, Susan S. [<mailto:SGeiger@orr-reno.com>]  
**Sent:** Wednesday, March 29, 2017 4:03 PM  
**To:** Wiesner, David K; 'Paul Phillips'; 'Scott J. Rubin ([scott.j.rubin@gmail.com](mailto:scott.j.rubin@gmail.com))'; William Black  
**Cc:** 'Mike Shultz'  
**Subject:** Friday tech session?

All – Consolidated has now provided responses to all of Staff's outstanding data requests. Based on our last technical session on 3/22/17 in DT 16-872, I believe we discussed having a tech session on Friday, 3/31 for oral follow up questions to the written responses. Could Staff please advise us as to whether this session will go forward as planned, and if so, at what time? Thank you. Susan

**Susan S. Geiger**  
*Admitted in NH and MA*

# Orr&Reno

Sustained Excellence for 70 years.

45 South Main Street, P.O. Box 3550

Concord, NH 03302-3550

Phone: 603.224.2381

Direct Ext: 603.223.9154

Fax: 603.223.9054

[www.orr-reno.com](http://www.orr-reno.com)

This transmission is intended only for the designated recipient(s). It contains confidential information that may be subject to the attorney-client privilege or other confidentiality protections under applicable law. If you are not a designated recipient, you must not read, use, copy or distribute this message. If you received this transmission in error, please notify the sender by telephone (603.224.2381) or by reply e-mail and delete this message.